

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ROBERT DANE WILBURN,
Plaintiff,

v.

LEHMAN'S PIPE AND STEEL, R.L.
LEHMAN, AND HAROLD LEHMAN,
Defendant.

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CIVIL ACTION NO. 9:22-CV-195-MJT-CLS

**MEMORANDUM ORDER OVERRULING
PLAINTIFF'S OBJECTIONS AND ADOPTING THE REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636 and the Local Rules of Court for the Assignment of Duties to United States Magistrate Judges, the District Court referred this proceeding to United States Magistrate Judge Christine L. Stetson to conduct all pretrial proceedings. *See* 28 U.S.C. § 636(b)(1); E.D. TEX. CIV. R. 72. On May 30, 2023, Plaintiff Robert Dane Wilburn filed a Motion for Leave to File Injunction and Protective Order [Dkt. 56] seeking an injunction and a protective order against the Texas Department of Criminal Justice ("TDCJ") related to his treatment by TDCJ officials.

Judge Stetson issued a Report and Recommendation to deny the motion as the relief requested in the motion was against the Texas Department of Criminal Justice ("TDCJ"), not a named defendant in this case, and the defendants in this case are not employees of or affiliated with TDCJ [Dkt 58]. The magistrate judge concluded that enjoining the named defendants here would not have any bearing on the relief requested in the motion and that the Court lacked the authority to issue protective order against an unnamed defendant. [Dkt 58]. On June 20, 2023, Plaintiff filed objections to the Report and Recommendation. [Dkt. 64].

I. Legal Standard

A party who timely files specific, written objections to a magistrate judge's report and recommendation is entitled to a *de novo* determination of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(2)-(3). To be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Frivolous, conclusive or general objections need not be considered by the district court." *Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir. 1982) (en banc), *overruled on other grounds by Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1412 (5th Cir. 1996) (en banc).

II. Defendant's Objections are Overruled

Although Plaintiff filed written objections in a timely manner, he failed to specifically identify the findings or recommendations to which he objected—including the place in the magistrate judge's report and recommendation where the disputed determination is found. Indeed, while Plaintiff asserts he is objecting to Judge Stetson's Report and Recommendation issued on June 2, 2023, he fails to address or even mention the injunction sought in his motion or Judge Stetson's recommendation that his motion be denied. [Dkt 64]. Instead, Plaintiff complains about arguments made at the Rule 16 conference, and defendants' actions in the present FLSA case. [Dkt 64]. Because Plaintiff's objections lack specificity or relevance to the Report and Recommendation, the Court need not conduct a *de novo* review. *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). Instead, the Court will review the Report and Recommendation to determine whether the findings and conclusion are clearly erroneous or

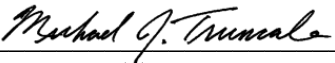
contrary to the law. 28 U.S.C. § 636(b)(1)(C); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).

Judge Stetson's conclusion is correct that the Plaintiff does not have standing to pursue injunctive relief when the named defendants do not have the authority to provide the relief sought. *McCreary v. Richardson*, 738 F.3d 651, 655 (5th Cir. 2013). Moreover, the Court does not have the power to issue a protective order against unnamed defendants.

III. Conclusion and Order

Defendant's objections [Dkt. 64] are OVERRULED. The Court has reviewed the findings and conclusions contained in the Report and Recommendation and found they are not clearly erroneous nor contrary to the law. *See* FED. R. CIV. P. 72(b). The Report and Recommendation of the United States Magistrate Judge [Dkt. 58] is ADOPTED. Plaintiff's Motion for Leave to File Injunction and Protective Order [Dkt. 56] is DENIED.

SIGNED this 5th day of January, 2024.



Michael J. Truncala
United States District Judge